A REMARKABLE CAUSE, ON A NOTE of HAND Try'd in the *Court* of *Conſcience*, ANNO 1741. BY A SPECIAL JURY;

WHEREIN

B---n D-----n, Eſq; was Plaintiff,

AND

W-----m H------t, Defendant.

WITH,

The Pleadings on both Sides at Large, and the Judge's Learned Recapitulation and Excellent Charge to the Jury on his Summing up the Evidence.

THE WHOLE

Faithfully taken down by an ingenious Gentleman of the Law preſent at the Trial. Made Publick by Order of the Court for General Inſtruction:

And Addreſs'd, in Particular,

To the Worthy Citizens of YORK.

Nihil à me alienum puto. Ter.

LONDON:

Printed for the AUTHOR and DEFENDANT, and ſold by *Eliza Haywood*, at *Fame*, under the Great Piazza, *Covent-Garden*, and at the reſt of the Pamphlet Shops. 1742.

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ADVERTISEMENT.

AS *it will be readily perceiv'd, that the following Tryal is imaginary, the Author, and Defendant, begs leave to aſſure his Readers, that tho' no ſuch Cauſe was really brought before any of our Courts of Judicature, there is not a Circumſtance, or Fact, contain'd in it, but what is ſcrupulouſly true, and will be atteſted to, in the ſolemneſt Manner, if neceſſary. The Reaſon of his bringing a* real Cauſe *before a* fictitious Court, *he apprehends too will be as eaſily gueſſed at: It was becauſe the Defendant's Pocket did not enable him to linger for Relief in a Court of Equity. For the Re, he has adher'd to the Forms and R of W min-ſter-Hall as near as his cquain e with them would permit him; and flatters himſelf, tho' he has taken upon him the preſumptuous, and ſeemingly partial, Task of being Council, Judge, and Jury in his own Cauſe, that there will nevertheleſs appear one ſtriking Truth thro' the Whole, that will carry the genuine Mark of Impartiality, by a certain undiſguis'd Simplicity; which Art, however labour'd, can never come up to, and which eaſily diſtinguiſhes Truth from Falſehood. 'Tis, on this alone, the Defendant muſt rely for a favourable Acceptance and Conſtruction from the Publick.*

As Something is due to the Relations of the Plaintiff, tho' little to himself, the Defendant can only add, that he is ſorry, for their Sakes, he has been compell'd, thro' the moſt obdurate Perſiſtance, to the Publication of a Tranſaction, which he is convinced will make them bluſh for him, and which would have never ſeen the Light, had it been poſſible for milder Methods to have prevented it.

The private Letters the Reader will find in the ſubſequent Pages, having given, it ſeems, no ſmall Cauſe of Offence to the Plaintiff, and drawn from him ſome very harſh Epithets, it was thought proper to incert them in the Tryal, that the World may judge, whether they are ſo exceſſive impudent *as he repreſents them, or are not rather wrote with the proper Spirit of one Friend to another, who is unjuſtly oppoſed by him.*

It will readily be allow'd, after all, that now the Publick are ſo juſtly attentive to Enquiries of national Concernment, a private Caſe muſt make a wretched Figure before their Tribunal; but, in ſhort, a Cobler *in the* Cholick, *will cry-out as much as a* King *in the* Gout; *and tho' no-body cares to be troubled but with the Afflictions of the* Great, *methinks, a poor Man under Oppreſſion may be indulg'd to roar out a little, in order to do himſelf Juſtice, and undeceive ſuch as have been induſtriouſly impos'd on, in Relation to the true State of the Caſe between the Plaintiff and Defendant.*

A REMARKABLE CAUSE ON A NOTE of HAND.

IN the memorable Year 1741, a Remarkable Cauſe was brought on to Tryal before the *Court of Conſcience*, on a Note of Hand, wherein *B——n D———n*, Eſq; was Plaintiff, and *W——m H———t*, Defendant, when, after a Hearing that laſted twelve Hours, a Verdict was given for the Defendant, with Coſts, by a *ſpecial Jury*.

The Court being ſat, and the Pannel of the Jury call'd-over, Sir *Chriſtopher Grinder*, Bart. Sir *Boſon Hardhead*, Knt. *Veſpaſian Vengeance*, and *Groundleſs Pique*, Eſqrs; and *Nero O Bryan*, Gent. were challeng'd by the Defendant, as near Relations to the Plaintiff; and Sir *Charles Lovewit*, Bart. and *Oreſtes Friendly*, Eſq; were * *challeng'd*

* A Term in Law, as having a Favour or Reſpect for the Defendant.

leng'd to the Favour by the Plaintiff. After which the Jury was ſworn, as under:

Sir *George Love-Truth*, } Barts.
Sir *Seymour Juſtice*, }
Sir *Clement Honour*, } Knts.
Sir *Peter Chriſtian*, }
Arthur Freeman, }
Solomon Gentle, }
Job Patience, } Eſqrs.
David Up-Right, }
Patrick Heartly, }
Phillip Yorkman, }
Joſeph Make-peace, } Gent.
Alex. Engliſh, }

Council for the Plaintiff.

Quirk Seem-right, Eſq; of *Grays-Inn*.
Flint Savage, Eſq; Serjeant at Law.

Council for the Defendant.

Impartial Tenderman, Eſq; of *Lincolns-Inn*.
Sir *Juſtin Reaſon*, Knt. Primier Serjt. at Law.

Then Mr. *Seem-right* open'd the Declaration as follows:

May it pleaſe your Lordſhip, and you Gentlemen of the Jury! *B——n D————n*, Eſq; is Plaintiff, and *W————m H————t*, Defendant. This is an Action on the Caſe, wherein the Plaintiff declares, that the Defendant, after the 1ſt Day of *July* 1720, *to wit.* on the 6th Day of *October* 1736, in the City of *London*,

don, gave the Plaintiff a Note in Writing, called a Promiſory Note, with his own proper Hand and Name thereto ſubſcrib'd, bearing Date the Day and Year laſt mention'd; whereby he promiſed to pay the Plaintiff 56*l.* on Demand, for Value receiv'd: that by Virtue of ſuch Note, and by Force of the Statute, in that Caſe made and provided, the Defendant became liable to pay the Plaintiff the ſaid 56*l.* and being ſo liable, promis'd Payment when requir'd; but, notwithſtanding ſuch Promiſe, the Defendant, intending to defraud the Plaintiff of the ſaid 56*l.* hath not paid him the ſame, and ſtill refuſes ſo to do; which the Plaintiff lays to his Damage of 100*l.* the Defendant hath pleaded he made no ſuch Promiſe, and, purſuant to the late Statute, hath given Notice to ſet off, in his Defence to this Action, the ſeveral following Items:

Plaintiff

Plaintiff to Defendant, Dr.

	l.	*s.*	*d.*
To Four Pit Tickets to the *Opera* of *Tom Thumb* ———	0	12	0
To Twelve Box and Twelve Pit, to *Arden of Faverſham*, a Tragedy—	4	16	0
To Ditto, and Ditto, to the *Hiſtorical Regiſter*, a dramatic Satire,——	4	16	0
To Two Gallons of Rum, ———	0	16	0
To Twelve genteel Dunning Letters to the Hon. Mr. *V*——, ———	1	10	0
To Two very long Letters, in Juſtification of the Breach of a Match to the Rev. Mr. *B*——, of *Chi*—*r*	0	10	0
To Two Love Letters to a Lady of *Chi*———*r*, ———	1	1	0
To Four Letters of Gallantry to a young Lady in Town, ———	1	0	0
To a Copy of Verſes wrote at the Plaintiff's Requeſt at *Buxton* Wells,	1	1	0
To Ditto at *Edinburgh*, ———	1		0
To A very long Letter and Copy to a Steward at *Pop*——*n* near *York*, on Matters of Buſineſs, ———	0	15	0
To Two Letters to Plaintiff's Brother at *Y*——*k*, ———	0	5	0
£.	18	3	0

And thereupon, *my Lord*, Iſſue is join'd. We ſhall call our Witneſſes, and prove our Debt; and

and then we hope, Gentlemen, you will find a Verdict for the Plaintiff, and give him Satisfaction in Damages.

Serjeant Savage.

My Lord, and Gentleman of the Jury; I am of Council of the ſame Side with the Plaintiff: And, my Lord, from Mr. *Seem-right*'s opening the Cauſe, you had the Matter in Queſtion ſo particulariz'd, that I ſhall take up but little of your Time at preſent, and only beg your Lordſhip will indulge me with a ſhort Word; reſerving myſelf for a Reply to the Council of the other Side when it ſhall be neceſſary.

The Thing before us, my Lord, is a Matter of Fact, and, with humble Submiſſion to your Lordſhip, quite inconteſtible, as the Statute ſupplies all Conſiderations of Notes of Hand, and ſuch Conſiderations are only inquirable in a Court of Equity.

Court.

That is true, Brother *Savage*, ſtrictly ſpeaking; but if the Defendant can ſhew a Note rather *drawn from him* than *given by him*; or the Conſideration of it not really and *bonâ fide* paid, or advanc'd, we then are oblig'd to give it due Weight, and may direct the Jury accordingly. —However, I would not further interrupt you now—Go on, Brother; we will take this into our Conſideration hereafter.

Serjeant Savage.

With your Lordſhip's Permiſſion then, I take it for granted, that the Legiſlature, foreſeeing the dangerous Inconveniencies ariſing from Conteſts of this Nature, were under a Neceſſity of ſupplying all Conſiderations of Notes of Hand by a Statute; nor have we the Statute alone to countenance our Demand, but it is ſupported likewiſe by common Senſe, Juſtice, and even the very Being of publick Credit.

In the firſt Place, my Lord, common Law, with all due Deference, is no more than common Senſe, or Reaſon, eſtabliſh'd by Degrees into common Uſage, which by time again receives the Sanction of common Law. Now can any thing be more reaſonable, or more juſt? Is any thing more in Uſe than the negotiating of Notes of Hand? And if ſuch Notes, my Lord, were ſuffer'd to be conteſted after this Manner, what could become of Commerce? What Merchant, or Trader, would confide in each other? Or what Buſineſs could poſſibly be tranſacted, if ſuch transferable *Paper-Caſh* ſhould be render'd precarious and diſputable?

I have had the Honour, my Lord, to be many Years at the Bar, and my Experience does not furniſh me with a Parallel Caſe; neither could I eaſily bring myſelf to believe the other Side were ſerious; but Briefs, my Lord, are great Temptations, even to old Practitioners, I perceive; and indeed the Duty we owe to our Clients, obliges

us

us to advance all we can for them. My learned Brethren, however, muſt give me leave to ſay, that the Defendant has not been well adviſ'd, and I could have wiſh'd he had not troubled this Honourable Court with a Defence that appears to me frivolous, vexatious, and impertinent.

I am conſcious, my Lord, that much unneceſſary time might be employ'd in quoting Precedents on this Occaſion; but as in doing it I ſhould be guilty of the ſame Thing myſelf, that I am complaining of in others, I ſhall conclude what I have to ſay, with obſerving, that if we can prove the Hand Writing of the Defendant, which we are able to do, I make no Queſtion but we ſhall obtain a Verdict in our Favour. With your Lordſhip's leave, therefore, we will proceed to prove the Note.——Call Mr. *Title-Page* the Bookſeller. (Mr. *Title-Page* ſworn) Look on that Note, Mr. *Title-Page*——are you acquainted with the Hand-writing of the Defendant, Mr. *H———t*?

Witneſs.

Yes— I have often ſeen him write, and believe that to be his Hand.

Serjeant Savage.

Put in the Note. (The Note put in and read)

Sir *Juſtin Reaſon.*

We allow it, Brother, to be the Hand-Writing of the Defendant.

Serjeant Savage.

The Matter then reſts here, my Lord —and I ſhould be glad to hear what Reaſons the Gentlemen againſt us have to alledge, why the Jury may not proceed to an immediate Verdict.

Sir *Juſtin Reaſon.*

With your Patience, Brother *Savage*—I'm of Council in this Cauſe, my Lord, and Gentlemen of the Jury, with the Defendant; and hope you will indulge me, if I take up ſome of your Time in Behalf of my Client. I doubt not but you'll be of Opinion, on my ſtating the Caſe, and ſupporting the Facts by proper Evidence, that the Plaintiff hath not the leaſt Pretence for recovering in this Action. And in Order to this, my Lord, it will be neceſſary to inform your Lordſhip, and you Gentlemen of the Jury, with the particular Tranſactions between the Parties (which Mr. Serjeant, no doubt for good Reaſons, has been careful to paſs over) by ſhewing after what Manner the Debt was contracted, that gave Riſe to this Proſecution; what ſort of Conſideration it was the Defendant received; on what Terms the Note of Hand in Queſtion was given; and in what Condition the Defendant was at the Time of giving it. When theſe Points come duly to be conſidered by your Lordſhip and the Jury; when I have taken off the Gloſs has been put upon this Affair, and gone thro' every diſtreſsful Circumſtance attending it, with the moſt religious Obſervance to Truth, I am perſuaded it will not only appear in a quite

quite different Light, but I'm afraid in a ſhocking one to every body capable of the Impreſſions of Humanity, and therefore I muſt obſerve more particularly deſerving the Regard of this honourable Court, where Matters of this Nature are duly cognizable.

You are then to know, my Lord, the Plaintiff is a Gentleman, who lives on his Fortune, and the Defendant one of thoſe Gentlemen, whoſe Eſtates lye in the imaginary Regions of of *Parnaſſus*. They are Townſmen, my Lord; were School-fellows; in the ſame Forme; and, till lately, have been very intimate together. Upwards of five Years ago, it ſeems, the Plaintiff, talking of a Summer Tour he was going to make, expreſs'd an Uneaſineſs, and ſaid, he ſhould loſe half of the Pleaſure of the Journey for want of a Companion, giving at the ſame Time ſeveral Signs and Tokens of a tacit Invitation to the Defendant. From ſuch kind of Overtures, my Lord, the Defendant was encourag'd to inſinuate how agreeable it would be to himſelf to accompany the Plaintiff, but added, he was ſorry his Circumſtances would not permit him to undertake ſo extenſive a Tour as was talk'd on. Upon this, it was agreed to go together at the Expence of the Plaintiff; the Defendant however (having a Soul above owing an Obligation) at the ſame Time declared, that if Fortune ſhould ever put it in his Power, he would with the higheſt Satisfaction make a greateful Return of his Part of the Charges,

which

which ſhould accrue. The Plaintiff accordingly began with advancing to the Defendant the Sum of twenty Guineas, in order chiefly to equip himſelf, ſo as not to be a Diſcredit to the Plaintiff. Soon after they ſet forward. On their Return to Town, my Lord, the Plaintiff took Occaſion to ſhew the Defendant the Amount of the Expences they had been at, giving him to underſtand, that his Quota, including the twenty Gnineas above-mentioned, and after deducting for the Servant, came to Fifty-Six Pounds—And, therefore, ſays he to the Defendant, you may as well give me a Note of the ſaid Sum, in Caſe it ſhould ever be in your Power to pay it. Accordingly, my Lord, the Defendant, without the leaſt Heſitation, or nicely enquiring into the Accounts, relying wholly on his Honour, gave the Plaintiff the Note of Hand juſt now proved to your Lordſhip, which, with Submiſſion to your Lordſhip's better Judgement, ought to have been, and, had the Plaintiff meant well, would doubtleſs have been expreſſive of the real Conſideration, inſtead of being drawn in ſuch abſolute Terms.

Such, my Lord, is the Manner in which the Debt was contracted; ſuch the Conſideration receiv'd by the Defendant; ſuch the Terms upon which the Note was given; and ſuch the Circumſtances he was under at the Time of giving it.

This

This being the real State of the Caſe, one would be apt to imagine a Gentleman could not, with Honour, make an ill Uſe of the Note; but ſo, my Lord, it has happened: After near five Yars Silence in this Affair, the Defendant has been proſecuted for the ſaid Sum, and purſued with uncommon Rigour; I might ſay, almoſt to brutal Severity. The taking out an Action againſt us, and even without previous Notice, however practiſed by every generous Creditor, ſcarce deſerves to be mention'd as a Subject of Complaint, when conſidered with other oppreſſive Circumſtances attending this Proſecution, of which your Lordſhip's Heart will ſoon have an affecting Proof.

From what has been ſaid, every one that hears me will, no doubt, take it for granted ſome conſiderable Change muſt have happened in the Defendant's Fortune for the better, and that a Want of Inclination, and not Power, has drawn on him all this grievous Treatment———No ſuch Thing, my Lord——There are other more latent Motives to it than the Recovery of a Debt, which will plainly diſcover themſelves in the Courſe of this Trial.

I will now, my Lord, beg your Indulgence while I ſubmit my Thoughts of this Affair before this honourable and upright Court. The Method I ſhall obſerve in my Anſwer to what has been alledged by the other Side, ſhall be this: I will juſt preface what I have to ſay with

an apt Similitude, and from thence deduce my ſubſequent Reaſoning, which I hope will prove to your Lordſhip's Satisfaction. And firſt for my Parallel.

Let me ſuppoſe a Perſon of good Circumſtances to invite another of an infinite leſs Fortune to the Tavern; and, after ſeveral Treats, the obliged Perſon, out of abundance of his Spirit, ſhould, among many other Profeſſions, declare, that he would return his Favours as ſoon as it ſhould come in his Power. If the former, taking Advantage of this Diſpoſition, ſhould wire-draw the latter out of a Note under a like ſpecious Pretence; and, on ſome fancy'd Diſguſt, ſhould put it in Force againſt him, I would ask the learned Gentleman, who has been ſo good to favour us with a Definition of Law, whether it would be conſiſtent with Reaſon or Conſcience, on which all Law is founded, and muſt ſubſiſt, that a Note of Hand, for ſuch Conſideration, ought to be pay'd? I hope your Lordſhip is of Opinion it would not; were it otherwiſe, we ſhould introduce a grovling, ſuſpicious Spirit into Society, deſtructive of Fellowſhip and good Neighbourhood; and every time we eat a Meal, or drank a Glaſs with a Friend, we ſhould fancy we were laying a Foundation for a Note of Hand, and conſequently for a Law-Suit. By a Parity of Reaſon, let me ask, with Reſpect to the Note of Hand in Diſpute, whether it is not equally inconſiſtent with Reaſon and Conſcience, that the Defendant ſhould be com-

compell'd to the Payment of a Debt, there is nothing more Reſonable than that a Debt, incurr'd for an *Affair of Pleaſure*, ſhould be *paid at Pleaſure*; and therefore contracted in the manner before deſcrib'd? Undoubtedly it would: and therefore the other Side ought not to claim it in Law, till they can as fully prove the Ability of the Defendant, as we have it in our Power to do the contrary.

Let us even ſuppoſe a Debt ever ſo juſtly contracted; where there is not an Ability of paying, what honeſt Man would have Recourſe to Severities in ſuch a Caſe? A very eminent Political Writer, *lately advanc'd to the Peerage* ſpeaking of the *Publick Funds*, ſays, that *it is very juſt and reaſonable that the Publick ſhould have the ſame Liberty that every private Man hath, to pay off his Debts when he is able:* By which it appears, that *Forbearance*, in caſe of Nonability, is a Thing taken for granted. I might take occaſion, my Lord, to enforce this Doctrine from holy Writ, and ſhew, that there is a Duty, as well incumbent on the *Creditor* as *Debtor*: I might corroborate it in the Words of our Savior, who ſays, *Have Patience with me and I will pay Thee all*; whereby the Creditor is given to underſtand, that he ought to wait till the Debtor is in a Condition of paying, and the Debtor is under a reciprocal Obligation to pay the Creditor when he is ſo. But I am aware the Plaintiff, like the cruel Creditor in the Goſpel, is too fine a Gentleman to believe in, and, I think, his

Treatment of the Defendant ſhews, that he is not greatly actuated by the Principles of Chriſtianity.

Mr. Sergeant, my Lord, thought it, no doubt, a material Point in introducing a Common Place Piece of Wit concerning Briefs and Duty to Clients; but this, with Submiſſion, deſerves no further Notice: I will therefore only beg Leave to obviate the other Part of his Argument with regard to *Trade* and *Publick Credit*. We have heard, that the Money we are charg'd with, was not advanc'd to ſerve the Purpoſes of Trade, and the Defendant has not deriv'd any Advantage from it in that Channel: Where then is the Detriment that can reſult to Commerce, from the Nonpayment of a Note, which had no Relation to it? or what the Injury to Publick Credit as it has been, I think, weakly attempted to be ſhewn it would?

I now paſs on, my Lord, to the Conſideration of the Circumſtances the Defendant was under at the Time of giving the Note.—And truly I think an Argument may be drawn from thence in his Favour. As I am apprehenſive I have already too much treſpaſs'd on your Patience, I ſhall not trouble your Lordſhip with Quotations from Caſuiſts and Civilians on Free Agency. It will be ſufficient for me to obſerve, that every Man, who is not a Free Agent, may be ſaid to be in a State ofCompulſion; and That Compulſion again does not conſiſt alone in outward Violence

Violence. Such Agents as act from the Influence of another, are ſo far under Compulſion, and may not improperly be call'd, Nominal Free Agents; as when a Perſon gives his Vote, not by his own Choice, but by the Direction of another; who will not call ſuch a Man under Compulſion? He might, it's true, have refus'd the other.—But then perhaps he might have drawn on himſelf Conſequences injurious to his Family, which Conſideration robs him of his Free Agency. In like manner the Defendant, on the Plaintiff's deſiring a Note, might be conſcious that the Requeſt was un-Gentleman-like, and a Hardſhip upon him; yet he could not have refus'd him, without betraying an ungrateful Diſtruſt of the Plaintiff, which ſurely was to be avoided on many Accounts. I ſhall make no Scruple therefore, from the little I have ſaid, to call the manner of giving the Note a Degree of Compulſion; and I need not mention the Laws and Statutes of *Durees* on this Head, ſince no Caſe can better claim your Lordſhip's Protection, and our Relief comes ſo properly before this Court. I do not deny, my Lord, but that the general Rule of Law is to determine on Matters of Fact; and the Note of Hand in Queſtion has been prov'd, which the Gentlemen of the other Side may think ſufficient to recover, but ſuch general Rule, methinks, ought occaſionally to deviate from its uſual Strictneſs, according to the Emergency of the Matter in Hand: But this muſt be ſubmitted to your Lordſhip; as like-

wiſe whether we have not a Right at leaſt, to expect a Stay of Proſecution till the Defendant is in a better Condition to ſatisfy the Demands of the Plaintiff, which is what I had to urge in his Behalf, and I hope I have done it to the Satisfaction of the Court.

Impartial Tenderman, Eſq;

My Lord, and you Gentlemen of the Jury, the worthy Council concern'd with me in this Queſtion, has ſpoke ſo copiouſly, and ſo fully to the Point, that he has left me little to add in Behalf of the Defendant, any further than to ſhew what Conduct we have obſerved ever ſince this Proſecution came to our Knowledge, and that the Defendant has not been wanting in all the milder Methods of Perſuaſion, as well as the moſt reaſonable Offers, in order to induce the Plaintiff to deſiſt from it. In this I hope to have the Indulgence of the Court, as it will ſerve to give a compleat and comprehenſive View of this Affair, and thereby enable you Gentlemen, to pronounce a ſuitable Verdict. In the firſt Place, my Lord, when we were ſurpris'd with a Writ againſt us (for I muſt obſerve with Mr. Serjeant, we had no previous Notice of it, either from the Plaintiff, or his Attorney) I ſay, my Lord, as ſoon as we had Intelligence from another Quarter of this genteel Surpriſe upon us, we wrote the Plaintiff the following Letter, which we ſubmit to be read in Court.

The

The Letter was accordingly read; but there being ſuch a great Buzz in Court, it was impoſſible to take it down. The Deficiency, however, is in ſome Meaſure ſupply'd by the Defendant's ſecond Letter, which gives the general Senſe of the firſt.

The Plaintiff, my Lord, did not vouchſafe us any Anſwer to our Letter, wherefore we wrote a ſecond time, which we again ſubmit to the Court.

The Letter was read, and is as follows:

The DEFENDANT *to the* PLAINTIFF.

SIR,

" SINCE my laſt, which contained a ge-
" nuine State of my unpromiſing Af-
" fairs, with the Offer of my Bond, inſtead of
" a Note, ſince then, I have waited in Vain for
" your Pleaſure at *B*——*n*'s. This Silence I
" confeſs affords me ſmall Proſpect of breathing
" the free Air by an Enlargement from my
" Coupe.—And, indeed, in Confirmation of theſe
" Doubts, I have juſt learnt the Motive to this
" humane, and very friendly Proſecution, (I
" had like to have ſaid Perſecution). It ſeems
" you have been pleaſed to charge me with be-
" ing ungrateful, and have taken ſuch violent
" Pique to my Conduct, with Regard to the
" *York*

" *York* Election, that it is not ſo much for the
" Money, that you proſecute me, but you are
" determin'd to be reveng'd on me, coſt what it
" will. I heard before, indeed, that you were
" liberal to your Mirmidons, even to Profuſe-
" neſs, which, I confeſs, ſurpriſs'd me the
" more, as I know ſuch a Diſpoſition is far from
" being the natural Bent of your Temper; but
" this Piece of Intelligence accounts for the
" Change, and I now ceaſe to wonder at it. I
" am ſorry, however, you ſuffer yourſelf to
" be the Prey of ſuch Harpies; I am ſorry too,
" that you give Way to ſo miſtaken, ſo ill-
" grounded a Reſentment. If the Neceſſity of
" my Affairs and Character ſo require, I doubt
" not to make it appear *North* and *South*, that I
" no ways deſerve ſuch ſevere Appellations,
" nor to be purſued and treated in ſo rigid a
" Manner. I have very often had Thoughts of
" calling on you; for I am very far from enter-
" taining any Terrors about ſeeing you; but as
" Things are circumſtanced, common Prudence
" would teach a Man not to throw him-
" ſelf in the Way and Knowledge of thoſe
" Gentry you have bound to you, in ſo ſtrong
" a Manner, to hunt me into a Goal.

" This, Sir, is the Reaſon, and I think it is
" a good one, why I have declined any Inter-
" view with you, even on the Red Letter Days.
" I repeat, therefore, what I ſaid before—If a
" Meeting is agreeable, on the Terms I men-
" tioned, I am ſtill ready to prove myſelf what,

" I can ſolemnly aver, I never had a Thought
" to depart from, nor ever gave juſt Cauſe for
" ſuſpecting I intended to do ſo: If otherwiſe,
" Fate muſt take its Courſe—I ſtand prepared
" for all Events; truſting, if I fall into the
" Hands of the *Mercyleſs*, I ſhall find more
" Compaſſion from my Country by ſome future
" Act of Inſolvency.

" I am, *&c.*

Novem. the 3d, 1741.

This Letter, my Lord, produced us an Anſwer from one *Fax*, who, it ſeems, is the Plaintiff's Attorney. I deſire it may be read, with our Reply to him and the Plaintiff.

They were accordingly read.

FAX *to the* DEFENDANT.

SIR,

" I Saw yours to Mr. *D*——*n*; he is far
" from perſecuting you (as you call it)
" on any other Account than for his Money.

" If you can give him any reaſonable Securi-
" ty, he *will accept it*. He ſays, he cannot af-
" ford to make you a Preſent of it; you told
" him, you ſhould have ſome Money when you
" come out of the Country, and perhaps you
" might; but you have thought fit to keep it

" to

" to yourſelf; and for that Reaſon you ought
" not to complain if he endeavours to come at
" his own: And as you are ſo cautious not to
" appear in Publick, I have Orders to *Out-law*
" you, and then blame yourſelf, and not Mr.
" *D—n* or,

" *Your humble Servant.*

The DEFENDANT *to* FAX.

SIR,

" I Receiv'd your's, or at leaſt one ſign'd with your Name; by the Hands of Mr.
" *B——n*; and as Gentlemen of your Profeſ-
" ſion generally like coming to the Point, I
" ſhall return you a very conciſe Anſwer, con-
" ſiſting of Matters of Fact, without entering
" into a Diſpute with you about Terms, which
" I did not abſolutely aſſert, but might inſinuate.

" I brought no Money out of the Country,
" other than a Trifle remaining of the Expences
" of the Journey. *So help me God.*

" I can neither raiſe, nor earn, a Shilling,
" beſet as I am. *So help me God.*

" I have no Security. *So help me God.*

" I will be as cautious as I can. *So help me*
" *God.*

" And

" And if you are pleaſed to *Out-law me*; " or, rather, *ſue me* to an *Out-Lawry*, your " Client and you muſt allow the Unhappy the " ſad Privilege of complaining. That I have " Cauſe and Materials I think is evident; tho' " I ſhould be ſorry to be reduced to the Extre- " mity of diſplaying them in their proper Co- " lours to the Publick. *So help me God.*

" I have already made all the Propoſals in my " Power to your Client. *So help me God.*

I am, *&c.*

Novem. the 9*th*, 1741.

The Oddneſs of this Letter caus'd a good deal of Laughing in Court: After which, they proceeded to read the following.

DEFENDANT *to the* PLAINTIFF.

SIR,

" AT the ſame Time that I am writing to " your Lawyer, you will indulge me " a Word in Anſwer to that Part of his Letter, " which I thought not proper to touch upon in " mine to him; as well as to take Notice of " another Particular juſt told me, that much " aſtoniſhes me.

" In a former Letter I hinted at a Motive of " Proſecution, with Relation to the *York Elec-*

" *tion*;

" *tion*; 'tis pretended in Mr. *Fax*'s Letter, that
" you have taken theſe Meaſures with me
" on no other Account but to get your Money,
" which you cannot afford to make me a Com-
" pliment of; and your Friend Mr. *W——n*
" tells me of a third Motive, the moſt ſhocking
" of all, I confeſs, as it tends to affect me in
" my Character, which you muſt give me leave
" to ſay, I put in no ſort of Competition with
" the Sum I ſtand charged with. The Motive I
" mean is this: It ſeems, that you were exaſ-
" perated to the Degree you are againſt me, be-
" cauſe, by your Intereſt, I had attempted to
" borrow ten Guineas of Mr. *G——ns*. I can-
" not but own my Blood boil'd within me upon
" hearing it, and immediately went to Mr.
" *G—ns* to have an Explanation of this ſcanda-
" lous Imputation from his own Mouth. After
" acquainting him with the Occaſion of my Viſit,
" he ſaid, he had more Senſe, and was too juſt
" to ſay any ſuch Thing of me; adding, that
" he was ſorry to hear his Name had been made
" Uſe of on any ſuch defamatory Account. To
" take the Thing, therefore, in one Point of
" View, it appears thus: If you really made
" ſuch a Pretence for proſecuting me to Mr.
" *W——n*, it is plain you could have no Foun-
" dation for it from Mr. *G——ns*, and conſe-
" quently are indebted to me for the greateſt of
" Injuries—That of ſtabbing my Reputation;
" for whatever Right you have to ſue me, you
" certainly have none that entitles you to take
" theſe Liberties with me; neither will I allow

" you

" you, or any one, to take them. If you did
" not make ſuch a Pretence to Mr. *W*——*n*, I
" leave to you to determine what Mr. *W*——*n*
" deſerves from you, Mr. *G*——*ns* and myſelf.
" So much at preſent for theſe wretched Preva-
" rications. I beg Leave now to ſay a Word
" concerning your not being in a Condition to
" compliment me with the Money. I never
" deſired to owe an Obligation to any Perſon:
" I have much too great a Soul; and am far
" from expecting ſuch a Compliment at your
" Hands. If I think I have Reaſon to hope
" for Time, I am ſure it is with a View that
" you may not make me the Compliment.—But
" here lies the Miſchief: You will have your
" own, as you call it, when it is not to be had,
" and thereby expoſe yourſelf to an Infallibili-
" ty of loſing it; whereas, if you waited for
" more favourable Circumſtances, you would be
" as certain of having it. According then to my
" Way of Reaſoning, in purſuing me with this
" Rigour, you are injurious to yourſelf, as
" well as to,

Sir, *&c.*

Novem. the 9*th*, 1741

After theſe Steps, my Lord, the Defendant deſired a Friend to write to the Plaintiff, from whom he received a very abrupt Anſwer by Word of Mouth, importing, he knew nothing of *the Man* (tho' he had both heard his Name, and eaten with him) and that he would only treat with Principals. Upon this, the Gentle-

man, notwithſtanding the Rudeneſs he met with, accompany'd the Defendant to the Plaintiff's Chambers. It is obſervable, the Plaintiff was very reſerv'd at this Interview, ſaying very little, and the Converſation ended with his deſiring the Defendant to ſend his Propoſals in Writing to his Lawyer, which accordingly he did the next Day, to the following Purport.

The DEFENDANT *to* FAX.

SIR,

" IT was agreed Yeſterday, at your Client's " Chambers, that I ſhould ſend you the " Propoſals I had to make, in Order to con- " clude the vexatious Affair between us. I " have accordingly done it, and deſire, as ſoon " as may be, you'll impart it to him, as the " utmoſt Effort in my Power in my preſent " Proſpect of Life; aſſuring him, at the ſame " Time, that upon any Change of Fortune for " the Better, I ſhould be very far from adhering " to the Letter of the Bond, but would readily " diſcharge the Whole, becauſe I know I ſhould " be glad to get rid of what would otherwiſe " be a perpetual Object of Reflection, not the " moſt agreeable to me.

" Pleaſe then to tell him, Sir, that I propoſe " to pay him Ten Pounds *per Annum* till the " Bond is diſcharged; that is, Ten Pounds the " firſt Year, Ten Pounds the 2d, Ten the 3d,

" Ten

" Ten the 4th, and the Remainder of the Bond
" the 5th Year, to commence at *Chriſtmaſs* next,
" and not before, inaſmuch as I have no Op-
" portunity of getting Money in the Summer,
" and he has made me loſe too much of the Sea-
" ſon to think of beginning Payment this
" Winter.

" If I ſhould mention more, it would be only
" deceiving your Client and myſelf. What I
" have now offer'd, I will endeavour at all
" Events to pay, which I hope nothing will
" hinder but a Priſon.

I am *&c.*

Novem. the 16th 1741.

We had no Anſwer, my Lord, to the above, tho' the Plaintiff had promis'd on his Word he would ſend us one the Moment he receiv'd our Propoſals; but we ſoon found, that the Encouragement given us of making up Matters was only a Feint to put us off our Guard; for we obſerv'd the Mirmidons kept double Watch during this Interval. At the Expiration of the Week, the Defendant not meeting with his Friend, went alone to the Plaintiff's Chamber, to inform himſelf of the Occaſion of this Silence. There was a Gentleman with him, and finding there was no Witneſs on our Side, he gave himſelf a Looſe to all the ill-natur'd and inſulting Expreſſions imaginable; as mean as unjuſt, and contradictory to each other. A-

mong

mong the many Inſtances of Inconſiſtency, he ſaid, that he had been at the Defendant's Lodgings, and that the Landlord gave him the beſt of Characters, adding, That very genteel People came after him, and that, in fine, he kept very good Company: A Moment after, he forgets himſelf, and ſays, he wonders that a Perſon arriv'd to the Defendant's Time of Life, ſhould not be in better Circumſtances; and therefore is inclinable to ſuſpect he muſt not have behaved himſelf well, ſince he is not richer. Another humane and genteel Matter of Reproach of the Plaintiff's was, that the Defendant eat and drank, and did not look like a Starveling. Upon the Defendant's mentioning the ſeveral Motives of Reſentment already ſet forth, the Plaintiff adds another to the Account: He ſays, our Behaviour to him, before we left Town laſt Summer, was no inconſiderable Cauſe of his having proceeded ſo far with us. It ſeems, my Lord, the Defendant being under ſome preſſing Exigency, that produced in him a great Agitation of Mind, happen'd, in the Working almoſt of Deſperation, to expreſs himſelf ſomewhat emphatically, That there was no ſuch Thing as Friendſhip. Upon this Exclamation, vented perhaps in the Bitterneſs of Soul, the Plaintiff takes Flame, and breaths nothing leſs then Revenge—By this, I imagine, he falls in a violent Rage whenever he ſees a Hero in Diſtreſs on the Stage, and what excites other People's Compaſſion, ſtirs up his Gall.

To conclude our Interview, my Lord, the Plaintiff at laſt ſeemingly agrees to the Defendant's Propoſals; but when we were in Expectation of a Meeting to put an End to this vexatious Affair, we received an Anſwer from his Attorney, importing, That if we would pay down Ten Pounds and the Coſts, he had Orders to ſtop Proceedings, and not to go on again without previous Notice, and that too, not unleſs we were able, and not willing; but that a Bond, payable at different Times, would not be accepted of, nor the Note given up.

As ſoon as we heard, my Lord, of this Alteration in the Plaintiff, we wrote the following.

DEFENDANT *to the* PLAINTIFF.

SIR,

" HAVING ſeen your *Ultimatum* by " your Lawyer, I beg Leave, as the " beſt Reply I can make, to ſend you the fol- " lowing little Parable.

" A certain Perſon of the *North* had a faith- " ful old Servant, for whom he had had a " Kindneſs a great while; but falling ſome " how or other under his Diſpleaſure, all on a " ſudden he alter'd his Behaviour towards him, " and treated him with great Rigor and Cruel- " ty.

" ty. The Name of the Maſter was *Hard-*
" *heart*, and the Name of the Servant was
" *Mean-well.* The Servant was exceedingly
" ſurpris'd and ſorry to find ſuch a Change in
" his Maſter, and did all in his Power, by En-
" treaty and Remonſtrance, to make him milder
" towards him, but without any Effect. Per-
" ceiving no Abatement of Severity, and being
" quite driven to Deſperation, he reſolved to
" go away, any where, rather than live under
" it any longer. At laſt, he was given to un-
" derſtand by a Back-adviſer of the Maſter's,
" that he might keep his Place, and do his
" Buſineſs as uſual, for that his Maſter, on his
" Word and Honour, would never more lay
" Hands on him, provided he would con-
" ſent to pay out of his Wages for all the
" Canes had been broken over his Head, and
" likewiſe ſuffer a drawn Sword to be always
" held over him. What was the Conſequence,
" my Lord? Why the poor Fellow drudg'd on
" in his Service in perpetual Fear and Appre-
" henſions; and ſo far was he from doing his
" Buſineſs the better for being under this Ter-
" ror, that he ſpoilt every Thing he took in
" Hand. In ſhort, the Servant pin'd and fell
" away to a Shadow; and the Maſter, in the
" Long Run, found his Error in the Loſs of a
" valuable, faithful Servant.

I am, *&c.*

Novem. the 26*th*, 1741.

To

To the Foregoing, my Lord, you have the following haſty Anſwer from the Plaintiff, with our Reply.

PLAINTIFF *to the* DEFENDANT.

SIR,

" I AM favour'd with your's of Yeſterday, " and duly obſerve your Letter in Pa-
" rables. In the firſt Place, I am not reduc'd ſo
" far as to make Uſe of Parables to pay
" my Creditors; neither will I ſuffer my
" Underſtanding ſo far to be impos'd on, to
" give a Diſcharge for any Parable your fertile
" Brain can invent. As you have quoted Scrip-
" ture, I am entitled eke ſo to do.—*Render un-*
" *to* Cæſar *the Things that are Cæſar*'s.—That I
" inſiſt on.

Your, *&c.*

Very peremptory truly, my Lord! which I dare ſay the Plaintiff takes for Wit; but I believe it will not paſs, with thoſe that read it, for any other than a poſitive Wrong-headed Piece of Miſconſtruction.

DEFENDANT *to the* PLAINTIFF.

SIR,

"ALL that Truth could ſay, I have ſaid.—
" All that Friendſhip, Compaſſion, Rea-
" ſon and Juſtice could urge, I have urg'd.——
" All that Man could do, I have done, to
" perſuade you, it is both your Intereſt, as well
" as mine, to grant me, not a Diſcharge, but
" only a Time, which is a Favour one would
" imagine, all Things conſider'd, ſhould not
" require ſo long a Sollicitation to no Purpoſe.
" A Perſon whoſe Breaſt is capable of being
" Proof againſt all this, his Heart, I confeſs,
" is not to be coveted. Something, therefore, is
" due to myſelf, and the Time I perceive is now
" come, in which you compel me to ſhew you
" my Spirit. I know the worſt:---It is ſome
" Conſolation to know it--and I am prepar'd for
" it. I have my Claims too, tho' I ſhall exhibit
" them in a leſs rigid Manner. In your Letter
" I obſerve the ſame Miſconſtruction is put up-
" on my Words, as upon my Actions.----Eter-
" nally miſtaken in both---You ſay, *Your Un-*
" *derſtanding is not to be impos'd upon to give me*
" *a Diſcharge for a Parable.* The poor Para-
" ble, I'm ſure, imply'd no ſuch Matter; ſo
" that either your Underſtanding, or your ill-
" judg'd Reſentment, is in Fault. I have
" nothing to object to your Liberty of quoting
" [I did not quote] from Scripture: I could
only

" only wiſh you had done it in properer Terms,
" and the Alluſion had been more applicable; for
" I muſt beg leave to inform you, that *Cæſar* was
" much too reaſonable, as well as too generous,
" in his Principles, to expect Impoſſibilities;
" nay, I dare ſay, he would have acquieſed in
" the old *Engliſh* Proverb, that, *Where it is not*
" *to be had, the King muſt loſe his Right*; which
" is what, however, I am very far from being
" deſirous of, any further than for a Time, as
" has been ſufficiently explained. I leave you,
" therefore, to glory in your Cruelty; and,
" ſince you are bent on Extremities,

I am

Your's with proper Reſolution.

Nov. the 29th 1741.

We have now, my Lord, gone thro' the Whole of the Negotiation between the Plaintiff and Defendant; in the Courſe of which, your Lordſhip cannot but have obſerv'd, in the Conduct of the Plaintiff, a great deal of Injuſtice, Meanneſs, Defamation, Prevarication, Cruelty, Obſtinacy and Oppreſſion; which, in my humble Opinion, are all ſet forth by the Defendant in ſpirited and affecting Terms, that carry Reaſon and Juſtice with them. I call it Injuſtice in the Plaintiff, my Lord, to come upon the Defendant, in his preſent narrow Circumſtances, for the Payment of a Debt contracted in the Manner re-

preſented. I call it a Meanneſs in him to proceed with the Defendant in ſo clandeſtine a Sort, in refuſing him the Compliment made by all fair Creditors—That of previous Notice. It is Defamation with a Witneſs, to propagate a notorious Falſhood, tending to injure an honeſt Man's Character; and as prevaricating to have Recourſe to ſuch pityful Pretences to palliate his Proceedings. The Cruelty and Obſtinacy that preſent themſelves, are too ſtriking to need pointing out. What Name can be given to his keeping the Defendant a Priſoner in his Lodgings for ſo many Months*, to the Detriment of his Buſineſs, and his Health?--------What can you call, I ſay, the doing all that in him lies, to ſtarve a Man, but the Height of Barbarity? There ſeems nothing wanting to compleat the Inhumanity of the Plaintiff, my Lord, but an implacable perſiſting in it: And, indeed, he bids fair to become inexorable---nay, ſeems to glory in being ſo, as the Defendant obſerves, as if he was afraid to encourage any generous Emotions of Compaſſion, and imagin'd them derogatory; whereas Commiſeration is the Favorite Attribute of the Deity, and the genuine Mark of a Greatneſs of Soul. To conclude, my Lord, I call his laſt Propoſal Oppreſſion---the very Nature of it is oppreſſive, and could only be ſuggeſted by one loſt to all free and generous Sentiments.——It is, indeed, holding a drawn Sword over the Defendant

* Six Months

fendant; and from being the Debtor, making him become the abſolute Slave of the Creditor.

Had the Money been lent us, my Lord, to throw into Trade, or to ſerve us in ſome Emergency, it would greatly alleviate the Caſe; but even then, in Circumſtances like ours, I queſtion whether it would not be deem'd cruel to purſue a Man with ſuch Severity as They have done Us. The Plaintiff, my Lord, has no ſuch Plea in his Favour.----He is a Gentleman----in no ſort of Trade, and may loſe by not waiting with Patience, but cannot receive any Detriment by granting us Time. I think, my Lord, this our Expectation ſo reaſonable, that if the Law will not put our Debt among the Irrecoverables, I do not queſtion, at leaſt, but we ſhall have a Verdict to ſtay Proceedings. In the mean Time, I crave your Lordſhip's Indulgence to call in our Witneſſes, in Support of what we have advanced; wherein we have, indeed, taken up much Time of the Court; but your Lordſhip will pleaſe to remember, we have not the Benefit of a Reply?

Court.

If I miſtake not, Brother *Tenderman*, you have ſeveral Times mentioned the Plaintiff's Chambers: Pray is he of the Law?

Impartial

Impartial Tenderman, Eſq;

No, my Lord.----He formerly us'd the Sea, but has had the Misfortune, you may perceive, to retain all the Brutality of the Boatſwain, and none of the Generoſity of the Sailor.

Court.

You may Proceed, I believe, to the Examination of Witneſſes.

Sir *Juſtin Reaſon.*

Yes, my Lord,——Our firſt Witneſs, my Lord, was the Servant who attended the Plaintiff on the Journey, which drew us in to give the Note of Hand in Queſtion, and thereby has prov'd a dear purchas'd Piece of Pleaſure to us. By him we ſhall make appear, that the Defendant was look'd on by the Friends of the Plaintiff, as his Gueſt. Let him be call'd in pray.

(Servant call'd in and ſworn.)

Servant.

I was hir'd, an it pleaſe you, my Lord, by Squire *D*———*n* upwards of Five Years ago, to go a Journey with him, which I did, and Mr. *H*———*t* went with us; and when we were in

in *Yorkſhire*, I have heard ſeveral of the Squire's Relations ſay, Mr. *H———t* was the Squire's Companion.

Sergeant Savage.

That's nothing to the Purpoſe, Friend —— Did you hear the Squire, as you call him, tell his Relations that Mr. *H———t* was his Companion and his Gueſt?

Servant.

I cannot ſay I have------ but all we Servants took it, that the Squire Treated. And I have ſeen Mr. *H——t* write ſeveral Letters for him, and Verſes, and the like: And have heard the Squire ſay to other Gentlemen, when we were at *Buxton Wells*, tho' not before Mr. *H——t's* Face, that he had brought Mr. *H———t* for the ſake of his Company; which is all I have to ſay to the Matter, an it pleaſe you.

Sir *Juſtin Reaſon.*

'Tis very well———my Brother *Savage* has, by his Croſs-examination, ſav'd me ſome Trouble, and therefore I excuſe his breaking in upon me before I had done with the Witneſs.

Impartial Tenderman, Eſq;

Let Mr. *Blunt* be call'd.

(Mr. *Blunt* ſworn.)

Pray, Mr. *Blunt*, acquaint my Lord and the Jury, what you know of the Defendant's Circumſtances.

Blunt.

Blunt.

I have known Mr. *H*———*t*, my Lord, ſeveral Years, and believe he is not in Circumſtances to pay Mr. *D*——*n*. I am his Creditor, as well as he, and am ſatisfy'd, if he had it, we ſhould both be pay'd; And therefore am ſorry to find Mr. *H*———*t* ſo hardly dealt with.

Quirk Seemright, Eſq;

A very pretty Story truly——Hardly dealt with, becauſe we endeavour by Law to come at our own:

Blunt.

Yes really, Sir, I think Mr. *D*———*n* has ſhewn himſelf a very cruel Creditor.

Quirk Seemright, Eſq;

Cruel Creditor, Sir! What do you mean?

Blunt.

What do you mean, Sir? I'm not to be frighten'd——I think a Man that can do, what he has done to Mr. *H*———*t*, his School-fellow,——his Townſman,——his Friend,——that can go to Law with his own B———r, and is capable of arreſting a dying Man, may ſurely be call'd a cruel Creditor.

Sir *Juſtin*

Sir *Juſtin Reaſon.*

We have ſeveral other Witneſſes to our Character, my Lord, as well as to prove the Defendant's Inability; but I believe we need not trouble your Lordſhip with any more.

Call *John Clark.*

(*John Clark* ſworn.)

This Witneſs, my Lord, will explain to your Lordſhip what we call one of the Plaintiff's Motives of Proſecution.

John Clark.

I heard Mr. *D———n*, an pleaſe you, ſay to Lawyer *Fax* as they were at Dinner one Day, that he would be reveng'd on Mr. *H——t* for not going to Vote as he deſir'd at the *York* Election; and that it was not ſo much for the Money, that he had taken out a Writ againſt him, as for diſobliging him in that Particular; for he ſaid, he had a deſign upon the *Member* for ſome Place, and therefore it was his Intereſt to oblige him, and make all the Votes for him he could.

Serjeant Savage.

Member. Prithee Friend, tell us who it is you mean by *Member?*

John Clark.

M——r T——n, an pleaſe you.

Serj eant Savage.

Mighty well,——we were aware of this Allegation againſt us, my Lord; but the Plaintiff was ſo far from being a Proſelite to that Gentleman's new-acquir'd Preferment, that we have a Witneſs in Court to prove, if requiſite, that he has ſpoke on him, on various Occaſions, in the moſt opprobious Terms, *viz.* as a Place-man and a *T——l*; and particularly, but ſo long ago as the late famons Duel in *Palace Yard*, a little before the Diſſolution of Parliament, he declar'd before a whole Coffee-Houſe, that the ſaid *M———r* behaved like a Sh———tt---n Cowardly Fellow, and look'd as white as a Clout. This we apprehend, my Lord, is ſufficient to ſet aſide *John Clark's* Evidence.

Impartial Tenderman, Eſq;

We will leave that to my Lord and the Jury------Pray call Mr. *G------ns*. It is in order, my Lord, to clear up the Defamation againſt Us:

(Mr. *G-----ns* ſworn.)

Pray, Mr. *G------ns*, did you ever tell Mr. *D------n* that Mr. *H-----t* came to borrow Ten Guineas of you on his Intereſt?

Mr:

Mr. *G———ns.*

No, Sir,——And I am ſorry my Name, has been made uſe of for any ſuch Purpoſe,——and I told Mr. *H———t* as much when he came to my Houſe one *Sunday* to ask me about it.

Sir *Juſtin Reaſon.*

We have only one Witneſs more to trouble the Court with, my Lord, till we come to prove our Set-off, and that is a Maid-Servant in the Houſe where the Defendant lodges; in order to ſhew, that the Plaintiff has not only expos'd Us publickly among all his Acquaintance, but likewiſe follow'd Us even to our private Lodgings, and groſly affronted the People of the Houſe. How ſhocking does a Gentleman appear, when he deſcends to commit Outrages on Civil Society, to gratify a mean and groundleſs Reſentment?

Call *Elizabeth Baly.* (*Elizabeth Baly* ſworn.)

Tell my Lord and the Jury what you know of the Matter.

Elizabeth Baly.

I am a Servant, my Lord, where Mr. *H——t* lodges,——The Door, for ſeveral Months, to my Knowledge, has not been free from Bailiffs. I was in the Shop when Mr. *D———n* came in one Night, and affronted my Miſtreſs and Me in a ſhocking Manner, without the leaſt Provocation. In ſhort, my Lord, he talk'd ſuch Stuff

as a Cart-man would be aſham'd of. I never ſaw one behave ſo beaſtly in all my Life,—— And, I'm ſure, I've known a great many in the World that have had the Misfortune to owe Money, but I never ſaw any one us'd ſo as Mr. *H——t* has been.

Serjeant Savage.

Have you any more to ſay to Mrs. *Baly*, Brother?

Sir *Juſtin Reaſon:*

No.

Serjeant Savage.

Then ſhe may go about her Buſineſs, for ſhe had none here that I know of——I can not ſee, indeed, my Lord, of what Uſe any of their Witneſſes are of, and why they have given the Court ſo much unneceſſary Trouble. All that has been ſaid, therefore, I look on as nothing to the Purpoſe; and for the particular Aggravations, I would have it remember'd, that the Characteriſtick of Poets, my Lord, is Invention.

Court.

That's all true, Brother *Savage*; and it ought to be remember'd too, they are generally needy.

Serjeant Savage.

In ſhort, my Lord, not to take up any more of your Time, we cannot imagine the Note will be ſet aſide, in Compliment to the Defendant, or any Man. I am ſure it would be entertaining an unworthy Opinion of your Lordſhip, and the Gentlemen of the Jury, to ſuppoſe you capable of giving ſuch a Precedent. It is Juſtice, my Lord, we are pleading for——We inſiſt on Juſtice,——We inſiſt on our Note,——Immediate Compliance with our Terms,——Security or a Jail.

Sir *Juſtin Reaſon.*

My Brother *Savage* ſeems ſo vehement about Juſtice and his Note, he puts me in Mind of the *Jew of Venice* and his *Bond.* And ſince he inſiſts ſo much upon Juſtice, we hope he will allow us the Juſtice to ſet off, which we apprehend is a ſufficient Diſcharge for their Note, admiting the Claim for the Money due thereon, came properly before your Lordſhip, and not under the ſeveral arbitrary Circumſtances and unjuſt Oppreſſions that now attend it.

(The ſeveral Items in the Set-off were proved by the Council ſucceſſively to the Satisfaction of the Court.)

Plaintiff

Plaintiff to Defendant, Dr.

	l.	*s.*	*d.*
To Four Pit Tickets to the *Opera* of *Tom Thumb* ———	0	12	0
To Twelve Box and Twelve Pit, to *Arden of Faverſham*, a Tragedy—	4	16	0
To Ditto, and Ditto, to the *Hiſtorical Regiſter*, a dramatic Satire,——	4	16	0
To Two Gallons of Rum, ———	0	16	0
To Twelve genteel Dunning Letters to the Hon. Mr. *V*——, ———	1	10	0
To Two very long Letters, in Juſtification of the Breach of a Match to the Rev. Mr. *B*——, of *Chi*—-*r*.	0	10	0
To Two Love Letters to a Lady of *Chi*———*r*, ———	1	1	0
To Four Letters of Gallantry to a young Lady in Town, ———	1	0	0
To a Copy of Verſes wrote at the Plaintiff's Requeſt at *Buxton* Wells,	1	1	0
To Ditto at *Edinburgh*, ———	1	1	0
To a very long Letter and Copy to a Steward at *Pop*—— *n*, near *York*, on Matters of Buſineſs, ———	0	15	0
To Two Letters to Plaintiff's Brother at *Y*——*k*, ———	0	5	0
£.	18	3	0

Sir

Sir *Juſtice Reaſon.*

We have now, my Lord, done for the Defendant, and ſhall ſubmit to your Lordſhip and the Jury, whether we have not ſupported our Caſe as we open'd it, and that to the Satisfaction of the Court, and hope to have your Lordſhip's Opinion in our Favour.

Court.

Brother *Savage*, have you any Thing to ſay by Way of Reply?

Serjeant Savage.

No, my Lord—we reſt it here.

Judge's Charge to the Jury.

Gentlemen of the Jury———You have a Cauſe before you for your Determination, that requires ſome Nicety to decide aright; in order to do which, without Favour or Affection to one Side or other, I ſhall impartially conſider the Matter; and that, rather to aſſiſt, than direct you in your Verdict.

On one Side, an Action is brought by the Plaintiff for a Note of Hand of Fifty-ſix Pounds, given by the Defendant to the Plaintiff in *October* 1736; and which is allowed as ſuch by the Gentlemen on the other Side. The Council for the Plaintiff tell you, that the Common Law only regards Matters of Fact; that the ſaid Note of Hand is an acknowledg'd Matter of

of Fact, and conſequently the conteſting it is both trifling againſt Law, Reaſon, and Juſtice, as well as dangerous to Publick Credit. They inſinuate further, that this Court cannot do otherwiſe than give a Verdict in their Favour, without being acceſſory to the Subverſion of Law. They look therefore on all has been ſaid by the other Side, as nothing to the Purpoſe; and conclude with inſiſting on Juſtice, immediate Compliance with their Terms, Security or a Jail.

On the other Side, Gentlemen, You have heard the Caſe fully ſtated—You have heard how the Note came to be given, and for what Conſideration it was given----You have heard a ſurpriſing Series of Malice, Rigor and Obſtinacy exercis'd on the Defendant Five Years after giving the ſaid Note----You have heard all the Steps, taken by one Side, to work on the Compaſſion of the other, have been fruitleſs----You have heard all the Propoſals in the Power of the Defendant to make, and a determin'd Reſolution in the Plaintiff not to accept, any but his own.

If I may ſpeak my private Sentiments, I have not met with a Caſe, in which I can ſay I have diſcover'd ſuch a Complication of Meanneſs, Malice, Cruelty and Defamation; a Caſe that affords more Hardſhip, and a Perſon that has been more deſpitefully treated and inſulted in all Reſpects, than the Defendant. I muſt own, I have a peculiar Tenderneſs for the Reputation and Character

Character of a Man, and cannot, therefore, by any Means approve the Attempt you have heard detected to injure the Defendant in that Particular: Nor can I say it is generous to purſue a Man with Revenge, for acting as an *Engliſhman*, and making uſe of the Liberty his Country gives him, in a Freedom of Choice. In ſhort, whether I conſider the one or the other, or the Obduracy in keeping a Man a Priſoner in his Lodgings for ſo many Months from his Buſineſs, or the Plantiff's deſcending to ſuch ſcurrilous Procedure, as to uſe groſs Language at the Defendant's Lodgings, they appear to me all equally unjuſt, cruel and ſcandalous. You have heard, in fine, the Defendant's Inability prov'd——You have heard the Plantiff's Propoſal——the one is manifeſt, and the other carries ſo much Inveteracy with it, that I cannot help thinking, they have more Deſign to exterminate the *Debtor*, than recover the *Debt*, if they could obtain the Sanction of the Law for their Purpoſe.

But notwithſtanding all this Maltreatment, Gentlemen, I would not be underſtood to ſay it authorizes you to annihilate the Note in Queſtion, however I may think. If Judges on this Bench were allow'd, in certain Caſes, to deviate from the Common Rules, and act with the Juriſdiction of a Lord Chancellor, I do not comprehend how ſuch a Privelege would be the Subvertion of Law. I ſay, Gentlemen, this is what I, nor I believe the Defendant's Council pretend to.

Sir *Juſtin Reaſon.*

No, my Lord——We deſire to pay the Note.

Court.

Therefore, Gentlemen, all that has been ſo much inſiſted on concerning Law, of courſe falls to the Ground. As for ſetting off, the Law certainly allows it, and the Defendant has very well ſucceeded in the Proof of it.

Serjeant Savage.

We do not deny the Items, my Lord,—We only think it hard that Advantage ſhould be taken for a few Letters and Verſes wrote for Pleaſure and Gallantry.

Court.

Nay, Brother *Savage*——That Argument makes directly againſt yourſelf—Conſider the Advantage you have taken, with Regard to an Affair of Pleaſure,——Well then, Gentlemen, —as I have ſaid already----all this Severity will not authorize you to ſet aſide the Note, but I think all theſe intereſting Circumſtances will juſtify the granting a limited Time for the Payment of it. This will be no Infringement of Law or Property, nor any Prejudice to Publick Credit. And with Reſpect to the Law, of doing it, I think there is as much in granting this, as in that of granting longer Term for any Tryal whatever.

The

The Jury went out and very ſoon returned with the following Verdict.

That all Proceedings be ſtay'd againſt the Defendant, and that a Year's Time be allowed him, or longer, unleſs it can be proved he is in Circumſtances; that the Defendant's Set-off be deducted from the Plaintiff's Note, and the Plaintiff to pay Coſts, as an Example againſt future Oppreſſions of this Kind.

FINIS.